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File No. B. Ct. Fees/47

Legal **DEPARTMENT**

B **BRANCH**

516 **Subject:—** P 19E

A Bill to amend the Court Fees Act, 1870, in its application to the Province of Bombay.

L. A. Bill No. XXVIII of 1946

Bom. Act No. XXIV of 1947

File No. B. Ct. Fees/47.

Std. Sectt. Slip 24 B e.

546-B

C O N T E N T S.

Legal Depatement File No. B Court fees/47

Sr. No.	Compilation No.	Subject	Pages.
		A Bill to amend the Court fees Act, 1870 in its application to the Province of Bombay.	
.	U.R.to H.D.No. 4806/4-7-1945	Reservation of the Bill for the consideration of the Governor-General	1-2
.	U.R.to H.D.No. 275-L/22-7-1946.	Draft Bill	3-4
1.	U.R.to H.D.No. 355-L/30-7-1946	Revised draft Bill	5-6
1.	L.L.D. No. 3607/14-4-1947.	Seeking Governor's assent	7-10
1.	L.D.R.I.No. 6069/1954-1947	Governor-General's assent	11-12
1.	L.D.R.I.No. 5063 24-6-1947.	Repugnancy of the Bill	13-14
7.	G.R.L.D.No 982-L/24-9-1946.	Publication of the Bill	15-18
		[pp. 17-18 not typed]	
8.	G.R.L.D.No 4926/ 14-6-1947	Publication of the Act	19-2024
		Bill, Act, and Debate	25-46

25/5

K.S.R.
25/5.

Office of the R.L.A.

A revised draft Bill is sent herewith. The draft Statement of Objects and Reasons at page 83 ante as very slightly amended in in order.

2. None of the provisions of the Milk Bill affects the special responsibility of the Governor under section 52(1) of the Government of India Act, 1935 or falls within the purview of clause (a), (b) (c) or (d) of para . XVII of the Instrument of Instructions to the Governor of Bombay. The Bill does not also require any recommendation of the Governor.

Sd/- P. N. J.
22-7- 46

Remembrancer of Legal Affairs

U.R. to A.S. No. 275-L, dated the 22nd July 1946.

V.M.D./16-8

4c.

Office of the R.L.A.

The Draft Bill sent to H.D. under this office U.R.No. 275-L dated 22nd July 1946 has been further revised in accordance with the instructions given by H.M. (L.D.), and a revised draft is sent herewith. The draft S.O.R. at p. 83 ante has also been slightly amended.

2. As the Bill imposes certain duties on the Courts H.D. should show it to the High Court, before publication.

Sd/-
30-7-46

for Remembrancer of Legal Affairs.

U.R. to H.D., No. 355-L, dated the 30 th July 1946.

V.M.D./17-5-
4c.

No. 3607

Legal Department,
Bombay Castle 14th April 1947.

From

D. V. Vyas, Esquire, I.C.S.,
Secretary to the Government of Bombay.

To

The Secretary to the Governor of Bombay.

Subject:- A Bill to amend the Court- fees Act,1870, in its application to the Province of Bombay.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for being presented to His Excellency the Governor, an authentic copy of a Bill to amend the Court-fees Act, 1870, in its application to the Province of Bombay , which was read for the ~~xxx~~ third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 11th February 1947 and on the 28th February 1947, respectively.

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935, or falls within the purview of clause (a), (b), (c) or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The subject-matter of the Bill falls under entry 1 in List II and entry 4 in List III in the Seventh Schedule to the Government of India Act, 1935.

4. As the provisions of sub-section (3) of new section 11 will be repugnant to the provisions of the Code of Civil Procedure, 1908, which is an existing Indian law relating to entry 4 in the Concurrent Legislative List, it would be necessary to reserve the Bill for the consideration of the Governor General with reference to section 107 (2) of the Government of India Act, 1935.

5. I am also to forward herewith six copies of each of the

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	items Nos. 1 to 3 and two copies of item No. 4 of the papers noted in the margin. The Bill was not referred to a Select Committee.
2. Bill as read for the third time and passed by the Bomy Legislative Assembly and as introduced in the Bombay Legislative Council.	
3. Bill as read for the third time and passed by the Bombay Legislative Council.	
4. Extracts from the proceedings of the Bombay Legislative Assembly dated the 11th February 1947 and of the Bombay Legislative Council dated the 28th February 1947.	

I have the honour to be,

Sir,

Your most obedient servant,

Sd/- D.V. Vyas.

Secretary to the Government of Bombay,

Legal Department.

Through

The Secretary to the Government of Bombay,

Home Department.

V.H.D./17-5
4c.

No. G.S. 1723.
Office of the Governor's Secretary,
Government House,
Bombay, 19th May 1947.

From

D. Symington, Esquire, C.I.E., I.C.S.,
Secretary to the Governor of Bombay.

To

The Secretary to Government,
Legal Department.

Subject:- The Court-fees (Bombay Amendment) Bill, 1946.

Sir,

With reference to the correspondence resting with this Office letter No. G.S. 1606, dated the 13th May 1947, I am directed to forward herewith the authentic copy of the Court-fees (Bombay Amendment) Bill, 1946, with His Excellency the Governor-General's assent ~~xx~~ signified thereon.

Your obedient servant,

Sd/-
For Secretary to the Governor of Bombay

£6069
19-5-47.

Submitted for informations .
File in B Ct . fees /46-47

S.S. Sd/- 19/5
P.A. 19-5

In such cases please check the date of assent reported and the date on the authentic copy.

Sd/- M.A.D..
19-5.

V.M.D./17-5
4c.

No. G.S. 1376.
Office of the Governor's Secretary,
Government House,
Bombay, 24 th April 1947.

From

D. Symington, Esquire, C.I.E., I.C.S.,
Secretary to the Governor of Bombay .

To

The Secretary to the Bombay Legislative Assembly. Council.

Subject:- The Court-fees (Bombay Amendment) Bill, 1946

Sir,

With reference to the above Bill, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council on the 11th and 28th February 1947 respectively, I am directed to state, for the information of the Honourable the Speaker, President, that as the provisions of sub-section(3) of new section 11 will be repugnant to the provisions of the Code of Civil Prodedure, 1908, which is an existing Indian law relating to entry 4 in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935, it will be necessary to reserve the Bill for the consideration of His Excellency the Governor-General with reference to section 107(2) of the Government of India Act. His Excellency the Governor is accordingly pleased, under section 75 of the Government of India Act, to declare that he reserves the Bill for the consideration of the Governor-General.

Your obedient servant,

Sd/-D. Symington.

Secretary to the Governor of Bombay.

No. G.S. 1376.
Office of the Governor's Secretary,
Government House,
Bombay, 24th April 1947.

Copy forwarded with compliments to :-
The Secretary to Government, Legal Department, with reference to his letter No. 3607, dated the 14th April 47

The Secretary to to Government, Home Department, with reference to his endorsement No. 2880/4BB, dated the 17th April 1947.

By order of the Governor of Bombay.

Sd/-

Secretary to the Governor of Bombay.

Legal Department
5053/24-4-47.

Submitted for information.
Await assent till 15-5.47.

Sd/-
25-4-47.

S.S. Id
25/4
A.A.S. Id M.A.D.
25/4.

V.M.D./17-5
4c.

BILLS.

A Bill to amend the Court-fees Act, 1870, in its application to the Province of Bombay.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 932 - L
Council Hall, Poona, 24th September 1946.

Memorandum from the Home Department No. 2880/ 4-B, dated the 23rd September 1946 - Transferring for necessary action, the papers relating to a Bill to amend the Court-fees Act, 1870, in its application to the Province of Bombay.

RESOLUTION:- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 25th September 1946, as Bill No.XXVIII of 1946.

2. The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette, on the 28th September 1946.

3. The dates of the various publications should be reported to the Secretary to the Bombay Legislative Assembly.

By order of the Governor of Bombay,

Sd/- S. L. Chaudhari,

Assistant Secretary to the Government of Bombay,
Legal Department.

To

The Manager, Government Central Press, Bombay (with the Bill and S.O.R. and with a request that 230 Gazette copies of the Bill and the S.O.R. may be forwarded to the Secretary to the Bombay Legislative Assembly for distribution to the Members of the Bombay Legislative Assembly and 25 copies for the use of the Legal Department.)

The Home Department,)
The Oriental Translator to Government)
The Secretary to the Bombay Legislative Assembly,)
The Director of Information, Bombay .) with a copy of the Bill and S.O.R.

---

* With five extra copies of the Bill.

V.M.D./17-5-46.

Acts.

Publication of the Court-fees (Bombay Amendment) Act, 1946.

GOVERNMENT OF BOMBAY.

Legal Department.

Resolution No. 4926

Bombay Castle, 14th May 1947.

Letter to the Secretary to the Governor No. 3607, dated the 14th April 1947.

& Letter from the Secretary to the Governor No. G.S. 1606 dated the 13th May 1947:

"With reference to the correspondence resting with my endorsement No. G.G. 1375, dated the 23rd April 1947, I am directed to inform you that intimation has been received from the Secretary to the Governor-General (Public) that His Excellency the Governor-General has assented to the Court-fees (Bombay Amendment) Bill, 1946, on the 11th May 1947."

RESOLUTION:- The law should be published as Bombay Act No. XXIV of 1947 in the Bombay Government Gazette, dated the 14th May 1947.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Home Department with reference to the memorandum from that Department No.2880/ 4-B, dated the 23rd September 1946.

By order of the Governor of Bombay,

Sd/- P. M. Lad,
Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department).
The Home Department,)
*The Oriental Translator to Government,) with a copy
The Secretary to the Bombay Legislative)
Council,) of the Act.
The Secretary to the Bombay Legislative)
Assembly,)
The Director of Publicity, Bombay,)

With five extra copies of the Act.

Submitted .
The Act as published will be found at p.21
The Act has been checked and is in order
Sd/- 17-5

W.M.D./17-5

L. A. BILL No. XXVIII OF 1946.

A Bill to amend the Court-fees Act, 1870, in its application to the Province of Bombay.

(As read for the third time and passed by the Legislative Assembly on the 11th February 1947.)

WHEREAS it is expedient to amend the Court-fees Act, 1870, in its application to the Province of Bombay for the purpose hereinafter appearing; It is hereby enacted as follows:—

VII of 1870.

1. This Act may be called the Court-fees (Bombay Amendment) Act, 1946. Short title.

2. For section 11 of the Court-fees Act, 1870, in its application to the Province of Bombay the following shall be substituted, namely:— Amendment of section 11 of Act VII of 1870.

VII of 1870.

"11. (*1*) In a suit for the recovery of possession of immoveable property and mesne profits or for mesne profits or for an account, the difference, if any, between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount found due shall, on delivery of judgment, be taxed by the Court and shall be leviable from the plaintiff and if not paid by him within thirty days from the date of the judgment be recoverable according to the law and under the rules for the time being in force for the recovery of arrears of land revenue. Taxing of Court-fees and their recovery in suits for mesne profits or account.

(*2*) The Court shall send a copy of the decree passed in such suit to the Collector.

(*3*) No decree for mesne profits passed in any such suit by the Court shall be executed until such difference is paid or recovered.

Explanation.—For the purpose of this section 'plaintiff' includes any party to a suit to whom any profits or amount are or is found to be due."

MO-1 Bk Hb 230

STATEMENT OF OBJECTS AND REASONS.

Where the plaintiff sues for mesne profits or for an amount which will be found due to him on taking accounts he is required to state, approximately, the amount sued for and he pays the Court-fee on such amount. Subsequently, if on an enquiry into mesne profits or on taking accounts a larger sum than what the plaintiff stated in the plaint is found to be due to him he is required under section 11 of the Court-fees Act, 1870, to pay the excess Court-fee but only when he applies for the execution of the decree obtained by him. It often happens that the decree is satisfied privately with the result that the plaintiff escapes payment of the additional Court-fee which he would have been liable to pay if he had applied for execution of the decree. To prevent this loss of revenue, it is proposed to provide that the excess Court-fee shall be taxed by the Court as soon as judgment is delivered and that it shall be recovered as an arrear of land revenue.

2. Under the Code of Civil Procedure, 1882, the amount of mesne profits was to be determined in execution proceedings but under rule 12 of Order 20 of the present Code the amount of mesne profits is required to be determined during the pendency of the suit and not in execution. In view of this provision the second paragraph of section 11 is obsolete and opportunity is taken to delete this paragraph.

22nd September 1946. MORARJI DESAI.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XXVIII OF 1946]

(As read for the third time and passed by the Legislative Assembly on the 11th February 1947.)

A Bill to amend the Court-fees Act, 1870, in its application to the Province of Bombay.

[Mr. Morarji R. Desai, M.L.A.]

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XXVIII OF 1946.

A Bill to amend the Court-fees Act, 1870, in its application to the Province of Bombay.

(As read for the third time and passed by the Legislative Assembly on the 11th February 1947.)

(As read for the third time and passed by the Legislative Council on the 28th February 1947.)

WHEREAS it is expedient to amend the Court-fees Act, 1870, in its application to the Province of Bombay for the purpose hereinafter appearing; It is hereby enacted as follows:—

VII of 1870.

1. This Act may be called the Court-fees (Bombay Amendment) Act, 1946. Short title.

VII of 1870.

2. For section 11 of the Court-fees Act, 1870, in its application to the Province of Bombay the following shall be substituted, namely:— Amendment of section 11 of Act VII of 1870.

"11. (*1*) In a suit for the recovery of possession of immoveable property and mesne profits or for mesne profits or for an account, the difference, if any, between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount found due shall, on delivery of judgment, be taxed by the Court and shall be leviable from the plaintiff and if not paid by him within thirty days from the date of the judgment be recoverable according to the law and under the rules for the time being in force for the recovery of arrears of land revenue. Taxing of Court-fees and their recovery in suits for mesne profits or account.

(2) The Court shall send a copy of the decree passed in such suit to the Collector.

(3) No decree for mesne profits passed in any such suit by the Court shall be executed until such difference is paid or recovered.

Explanation.—For the purpose of this section 'plaintiff' includes any party to a suit to whom any profits or amount are or is found to be due."

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XXVIII OF 1946]

(As read for the third time and passed by the Legislative Assembly on the 11th February 1947.)

(As read for the third time and passed by the Legislative Council on the 28th February 1947.)

A Bill to amend the Court-fees Act, 1870, in its application to the Province of Bombay.

[Mr. MORARJI R. DESAI, M.L.A.]

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

Registered No. B-1.

The Bombay Government Gazette

PUBLISHED BY AUTHORITY

WEDNESDAY, 14TH MAY 1947.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV

(1) Acts of the Local Legislature of the Bombay Province and (2) Acts of the Indian Legislature assented to by the Governor General.

CONTENTS.

	PAGES
BOMBAY ACT No. XXIV OF 1947—An Act to amend the Court-fees Act, 1870, in its application to the Province of Bombay	244-245

The following Act of the Bombay Legislature having been assented to by the Governor General on the 11th May 1947 is hereby published for general information.

P. M. LAD,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XXIV OF 1947.

(First published, after having received the assent of the Governor General, in the "Bombay Government Gazette" on the 14th May 1947.)

An Act to amend the Court-fees Act, 1870, in its application to the Province of Bombay.

WHEREAS it is expedient to amend the Court-fees Act, 1870, in its application to the Province of Bombay for the purpose hereinafter appearing; It is hereby enacted as follows :—

VII of 1870.

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"11. (*1*) In a suit for the recovery of possession of immoveable property and mesne profits or for mesne profits or for an account, the difference, if any, between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount found due shall, on delivery of judgment, be taxed by the Court and shall be leviable from the plaintiff and if not paid by him within thirty days from the date of the judgment be Taxing of Court-fees and their recovery in suits for mesne profits or account.

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(*2*) The Court shall send a copy of the decree passed in such suit to the Collector.

(*3*) No decree for mesne profits passed in any such suit by the Court shall be executed until such difference is paid or recovered.

Explanation.—For the purpose of this section 'plaintiff' includes any party to a suit to whom any profits or amount are or is found to be due."

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS